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July 22, 2002

**VIA U.S. MAIL**

Marlene Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

RE: Notice of Proposed Rulemaking Re: Appropriate Regulatory Treatment for Broadband  
Access to the Internet Over Cable Facilities  
Docket No. 02-52

Dear Ms. Dortch:

Please find enclosed for filing an original and four copies of the Reply Comments of the City of  
Menomonie, Wisconsin in the above-referenced matter.

Very truly yours,



Adrian E. Herbst

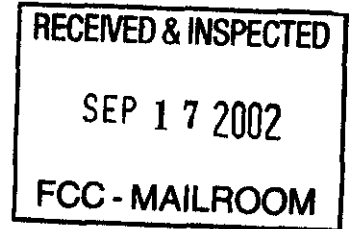
AEH/dnd  
Enclosures

cc: Lowell Prange, City Administrator  
Qualex International, Portals II  
Sarah Whitesell, Cable Services Bureau

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554



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Notice of Proposed Rulemaking )

Appropriate Regulatory Treatment for )  
Broadband Access to the Internet Over )  
Cable Facilities )  
\_\_\_\_\_ )

CS Docket No. 02-52

**REPLY COMMENTS OF THE CITY OF MENOMONIE, WISCONSIN  
("MENOMONIE")**

These comments are filed by Menomonie in support of the comments filed by the Alliance of Local Organizations Against Preemption (the "Alliance"). Like the Alliance, Menomonie believes that (a) local communities should be able to require cable operators to obtain additional authorizations to use and occupy public rights of way to provide cable services, and to enforce existing authorizations that have been granted for the service; (b) should be able to obtain fair and reasonable compensation for use and occupancy of the public rights-of-way to provide non-cable services; and (c) should be able to regulate cable companies in their provision of non-cable services, as provided under the Cable Act.

These comments will also provide information regarding the status of cable modem service in Menomonie.

1. Menomonie and the Status of Cable Modem Service.

Menomonie has a total population of approximately 15,103. The City is also the home of the University of Stout campus, with over 7,000 students. Menomonie receives its cable service from Charter Communications which has approximately 3,314 subscribers. The cable system

serving Menomonie offers subscribers cable and cable modem service through a hybrid fiber coaxial cable system, with 78 analog channels, recently upgraded and rebuilt in accordance with a renewed franchise entered into between Menomonie and Charter in 2001.

2. The Menomonie Franchise and Cable Modem Service.

The Menomonie franchise was issued to Charter on February 1, 2001, based on the requirements of the City's Master Cable Ordinance ("City Code"). The definition of gross revenues, in Section 2.15 of the City Code, includes cable modem service unless prohibited by applicable law. Pursuant to that provision, Menomonie is entitled to receive franchise fees on cable modem service. Menomonie received \$7,916.81 in cable modem franchise fees in 2001. These payments were made in consideration of the grant of the franchise. The Menomonie franchise was written to permit Charter to provide both cable services and other services, as long as Charter complied with the franchise terms.

Neither the franchise requirements or the fees have prevented or delayed the roll-out of cable modem service in Menomonie.

3. How Menomonie Regulates Cable Modem Service.

Menomonie regularly receives complaints from customers regarding the services provided by Charter. These include complaints about traditional video programming services and about cable modem services. Responding to these complaints requires significant staff time and effort.

There are many unique customer service problems associated with cable modem services. In addition, it is often difficult, if not impossible to separate regulation of cable modem service from the regulation of cable service in many critical respects (see Exhibits attached):

- Cable modem service is marketed jointly with cable service.

- When Menomonie receives complaints from citizens about promotional practices, the complaint may apply to both services.
- A single bill is sent for cable modem and cable services, so billing complaints involve both.
- Customer service calls go to a single number, so telephone answering policies affect both.
- A customer may call a single location to schedule installation of cable service and cable modem service, and customer complaints about installations and missed appointments may relate to both services.

As a result, when one service has problems, the quality of the other service can be affected. Customers are advised on their bill by Charter that they can call our office with complaints, and as far as we can tell, at no time does the operator advise the customer that protections accorded with respect to cable service do not apply with respect to cable modem service. In our view, there is a substantial and continuing need to protect consumers of cable modem service, in light of the complaints we receive, and because of its close tie to video services.

Cable modem service is also subject to the following requirements under our franchise:

- Charter is required to provide all its services throughout the City of Menomonie and is prohibited from redlining.
- Charter is prohibited from discriminating against potential customers.
- Charter is prohibited from demanding exclusive contracts as a condition of providing service to MDUs and others.

4. Menomonie and Broadband Deployment.

Menomonie believes it is very important to encourage broadband deployment, and to encourage development of broadband applications. Menomonie also believes that in order to achieve the promise of broadband, broadband has to be available to the entire community, as far as possible. Menomonie wants to avoid knowledge and opportunity gaps created because some parts of Menomonie have access to broadband information, while others do not.

To that end, Menomonie devotes significant resources to take advantage of the information highway and to extend its benefits to all and has devoted considerable resources to the creation of local programs and services, including the City Council meetings and access programming.

The funds that Menomonie receives from cable modem franchise fees are extremely important to help offset the costs of these and other activities. If we lose these funds, it will be more difficult to enforce franchise requirements, including customer services, protect consumers, offer the extensive local community video services, and to promote the deployment of broadband throughout the community.

Respectfully submitted,



---

Adrian E. Herbst  
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The Baller Herbst Law Group  
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Minneapolis, Minnesota 55415  
(612) 339-2026

Dated: July 22, 2002



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Digital Choice 22 Digital Channels

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**EXPANDED BASIC**

- 2 KTCA - PBS Minneapolis
- 3 WEUX - FOX 48 Eau Claire
- 4 WCCO - CBS Minneapolis
- 5 KSTP - ABC Minneapolis
- 6 WEAU - NBC 13 Eau Claire
- 7 CTV
- 8 WKBT - CBS La Crosse
- 9 KMSP IND 9 Minneapolis
- 10 WQOW - ABC 18 Eau Claire
- 11 KARE - Nbc 11 Minneapolis
- 12 WHWC - PBS 28 Menomonie
- 13 C-SPAN
- 14 WGN
- 15 The Weather Channel
- 16 A&E
- 17 Lifetime
- 18 Fox Family Channel
- 19 QVC
- 20 Home Shopping Network
- 21 CNBC
- 22 The Disney Channel
- 23 MTV
- 24 The Nashville Network
- 25 Nickelodeon
- 26 The Learning Channel
- 27 The Discovery Channel
- 28 Headline News
- 29 CNN
- 30 ESPN
- 31 TNT
- 32 USA
- 33 AMC
- 34 Tech-TV
- 35 MSNBC
- 36 E! Entertainment
- 37 MSC
- 38 Outdoor Life
- 40 Animal Planet
- 41 HGTV
- 42 The WB
- 43 TV Land
- 44 VH-1
- 45 TBS
- 46 TBN/EWTN
- 47 Gameshow Network
- 48 Toon Disney
- 49 FX
- 50 ESPN2
- 51 The Golf Channel
- 52 C-SPAN2 U.S. Senate
- 53 Court TV
- 54 Sci-Fi Channel
- 55 Cartoon Network
- 56 Bravo
- 57 The History Channel
- 58 CMT
- 59 Comedy Central
- 60 Fox News Network
- 61 The Travel Channel
- 62 National Geographic
- 63 The Food Network
- 64 The Soap Network
- 65 The Health Channel

**DIGITAL CHOICE**

- 100 Discovery Wings
- 102 Discovery Home & Leisure
- 104 Discovery Science
- 106 Discovery Civilization
- 108 BBC America
- 110 Discovery Health
- 112 Discovery Kids
- 114 Nick Noggin
- 116 Nick Gas
- 118 Nick West
- 120 The Biography Channel
- 124 DIY - Do It Yourself Network
- 126 History international
- 128 CNN Financial News
- 130 CNN Sports Illustrated
- 140 MTV-2
- 142 MTV-S
- 144 MTV-X
- 146 VH-1 Classic Rock
- 148 VH-1 Classic Country
- 150 Much Music
- 154 Lifetime Movie Network

**PREMIUM MOVIE CHANNELS****HBO Plex**

- 500 HBO E
- 505 HBO Plus E
- 510 HBO Signature E
- 515 HBO Family E
- 520 HBO Comedy E
- 525 HBO Zone E

**Cinemax Plex**

- 550 Cinemax E
- 555 MoreMax E
- 560 ActionMax E
- 565 ThrillerMax E

**Showtime Plex**

- 600 Showtime E
- 605 Showtime 2 E
- 610 Showtime 3 E
- 615 Showtime Extreme E
- 620 Showtime Beyond E

**The Movie Channel Plex**

- 650 The Movie Channel E
- 655 The Movie Channel 2 E
- 675 Flix E

**Starz! Super Pack**

- 701 Starz! E
- 704 Black Starz!
- 708 Starz! Family
- 710 Starz! Cinema
- 726 Encore
- 740 Encore Action
- 744 Encore Love Stories
- 748 Encore Mystery
- 752 Encore True Stories
- 756 Encore Westerns

**MUSIC CHOICE**

- 901 Showcase 1
- 902 Showcase 2
- 903 Origen
- 904 New Releases
- 905 American Originals
- 906 Sound of the Seasons
- 907 For Kids Only
- 908 World beat
- 909 Body & Soul
- 910 Classic R&B
- 911 R&B Hits
- 912 Dance
- 913 Rap
- 914 Metal
- 915 Alternative Rock
- 916 Progressive Rock
- 917 Classic Rock
- 918 Rock Hits
- 919 Soft Rock
- 920 Hit List
- 921 30's
- 922 70's
- 923 Solid Gold Oldies
- 924 Today's Country
- 925 Classic Country
- 926 Big Band
- 927 Singers & Standards
- 928 Easy Listening
- 929 Classical Masterpieces
- 930 Light Classical
- 931 Atmospheres
- 932 Light Jazz
- 933 Jazz
- 934 Blues
- 935 Gospel
- 936 Contemporary Christian
- 937 Musica Latina
- 938 Tropical
- 939 Mexicana
- 940 Tejano

**IN Demand Pay-Per-View Channels**

- 801-834 IN Demand Movies
- 850 PPV Preview, 860 Hot Choice
- 891-893 Adult

**38 PPV CHANNELS**

**CHANNEL LINE-UP for**  
**Menomonie**  
**Colfax**  
**Wheeler**



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